SBCivil Writ Petition No.1022/2006

Ashutosh Rawal
Vs.
Uttari Rajasthan Sahkari Dugdh Utpadak Sangh Ltd.,
Bikaner and others.

Date of Order :: 1st September, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. C.S.Kotwani, for the petitioner.
Mr. D.K.Parihar, for the respondents.

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By this petition for writ validity, propriety and correctness of the order dated 14.2.2006 passed by the Managing Director, Uttari Rajasthan Sahkari Dugdh Utpadak Sangh Ltd., Bikaner is questioned alleging to be passed in violation of mandatory provisions of Rajasthan Cooperative Dairy Federation Employees (Disciplinary Action and Appeals) Regulations, 1980 (hereinafter referred to as “the Regulations of 1980”).

The factual matrix necessary to be noticed is that by a memorandum dated 16.6.2005 the petitioner was instructed to explain his conduct about the charges levelled in the statement of allegations annexed to the memorandum. The disciplinary authority decided to conduct an inquiry on denial of charges by the petitioner and for the purpose Shri Kamal Chhabra, Manager (Finance & Accounts), Rajasthan Cooperative Dairy Federation Ltd., Jaipur was appointed as inquiry

officer. The inquiry officer submitted his report on 27.9.2005 establishing guilty of the petitioner for all the charges. Accordingly the disciplinary authority by a notice dated 26.10.2005 sought comments of the petitioner with regard to tentative decision for imposing a penalty of dismissal from service. The petitioner in response thereto submitted detailed representation explaining innocence, however, the disciplinary authority choose to impose a penalty of dismissal upon the petitioner by order impugned, hence this petition for writ is preferred invoking extra ordinary jurisdiction of this Court to quash the order passed by disciplinary authority and also to declare the entire disciplinary proceeding illegal.

To claim the relief as above, contentions of counsel for the petitioners are :-

> "(1)that the mandatory procedure prescribed under regulation 12 of the Regulations of 1980 was not adhered by the inquiry officer while conducting the inquiry that has caused prejudice to the petitioner to the effect that he failed to defend himself effectively. The non-adherence of the procedure prescribed under regulation 12 of the Regulations 1980 vitiates the entire inquiry and also the order passed by the disciplinary authority consequent thereto; and

(2)that the order passed by the disciplinary authority does not contain any reason to establish the guilty of the petitioner, as such the same is absolutely a non speaking order and, therefore, deserves to be quashed."

In reply to the writ petition it is stated that the inquiry in accordance with the Regulations of 1980 was conducted by providing sufficient opportunity to the delinquent employee to defend himself, therefore, the allegation of breach of principles of natural justice and causing prejudice to the rights of the petitioner is ill-founded. The respondents alongwith reply also placed on record all the order sheets of the inquiry proceedings. Learned counsel for the respondents, while frankly admitting that the order passed by the disciplinary authority is not a speaking one, states that it is not required to be so as it is a concurrence with the findings given in inquiry report, a copy whereof was supplied to the delinquent employee. It is further stated by counsel that in event this Court found that the order impugned was necessary to be speaking and reasoned one then too no order for reinstatement of the delinquent is required to be given as the disciplinary authority shall pass an order afresh with reasons to substantiate the findings.

Heard counsel for the parties.

Regulation 12 of the Regulations of 1980 provides the procedure for awarding major penalties. Clause (2) of regulation 12 of the Regulations of 1980, that deals with the procedure for imposition of major penalties, reads as under:-

> “12(2)Procedure for imposition of Major Penalties:
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> (a)A person against whom action is proposed to be taken for a major penalty, shall be provided with a copy of the charge or charges as well as a statement of allegations that have been made against him and about which enquiry is proposed to be held. Such copy of charge sheet and allegations shall be sent under postal certificate to the employee's permanent address available and recorded with the Federation and such an issue of charge sheet under postal certificate shall be conclusive proff of service of the charge sheet and statement of allegations on him and no plea of non receipt against this shall be admitted.
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> (b)The person charged shall be required within a period of 15 days of the receipt of the charge sheet by him to put in his written statement of the defence giving a complete list of documents and defence witnesses. If no such statement is furnished by the person charged within the period prescribed time and unless extended, it

shall be presumed that the person charge sheeted admits his guilt and the competent authority is within its right to pass final exparte orders against him in the enquiry.

(c)If after furnishing the written statement the person charged desires to see the relevant documents such of the documents as are being taken into consideration or are to be relied upon for the purpose of supporting the charge or charges may at the discretion of the Enquiry officer be shown to him.

(d)The person charged shall also produce all the relevant documents required by him in his defence together with a list of his defence witnesses if any alongwith his written statement so that enquiry may not be delayed unnecessarily. However, the Enquiry Officer may admit evidence of relevant documents if any even at a later stage of the enquiry by by either side before the final orders are passed by the officer provided he finds that such documents provide necessary evidence for arriving at a fair decision.

(e)Oral evidence may be recorded by the Enquiry Officer if he permits any witness to be produced by either side. After the person charged has presented his written statement as per close(b). The evidence of the prosecution shall be recorded first and thereafter the defence evidence shall be recorded.

All such statements shall be read over to the witness and then signed by the

witness. If the witness is illeterate then his thumb impression shall be taken and the enquiry officer shall also sign the same in proof of the same being read over to him and admitted to be correct by the witness.

(f)Normally it shall be responsibility of the prosecution and defence to produce their witnesses by themselves unless the enquiry officer otherwise directs the summoning of the witnesses through its agency but unnecessary adjournments shall not be given for calling or appearances of witness which may prolong enquiry and defeat the justice.

(g)The expenses of witness, if any, called by the Federation to given evidence against the person charged shall be borne by the Federation and the expenses of witness called by, or at the instance of the person charged shall be borne by him.

(h)After completing the enquiry and giving the person charged a further opportunity of making a written or oral statement, the enquiry officer shall record his findings on such charges and reasons for such findings.

(i)The competent authority, on the basis of its own findings or on those of the Enquiry Officer, shall pass such orders as he may deem fit provided that before the competent authority passes the final order imposing the penalty of dismissal or removal, the person concerned shall be supplied with a copy of the findings of the competent authority or of the enquiry officer, as the case may be and give a 15 days notice to

show cause why the penalty should not be imposed.

(j)Every order imposing a penalty on the Federation Employees shall be communicated to him in writing unless the same has been announced personally to him by the competent authority and a note to this effect made on the order sheet by the competent authority."

The validity of inquiry conducted against the petitioner is required to be examined at the scale of the procedure prescribed to impose a major penalty under the Regulations of 1980. The inquiry officer at the first instance on 19.7.2005 after noting down presence of the petitioner and the presenting officer of the department allowed the petitioner to inspect certain documents. On next date of inquiry proceeding i.e. 11.8.2005 some more documents were allowed to be inspected by the petitioner and an opportunity was given to him to avail service of a defence counsel. The inquiry then was fixed on 24.8.2005. The inquiry officer on 24.8.2005 recorded the statements of the petitioner and closed the inquiry proceedings. It is pertinent to note that no prosecution evidence at all was recorded by the inquiry officer. From perusal of inquiry report, i.e. available on record as a part of Anx.16, it reveals that the inquiry officer has taken into consideration number of documents to establish guilty of the petitioner though the documents

concerned were never placed before him by the department. The documents on which inquiry officer placed reliance are not at all referred in the order sheets drawn by the inquiry officer during inquiry proceedings. It is also apparent from the order sheets of the inquiry proceedings that no prosecution witness placed these documents before the inquiry officer. It is really surprising that the inquiry officer without having any evidence to substantiate the allegations levelled against the petitioner held the petitioner guilty for the charges levelled. Beside the general principle, even under regulation 12(e) of the Regulations of 1980 the inquiry officer should have recorded the evidence of the prosecution first and then an opportunity was required to be given to the petitioner to defend himself.

In the instant matter the inquiry officer acted in violation of regulation 12 of the Regulations of 1980 by recording statements of the petitioner at first instance. This has certainly caused a prejudice to the petitioner's right and that vitiates the entire inquiry proceedings.

In view of the fact that I have already held the entire inquiry illegal, I do not consider it appropriate to deal with second contention raised by counsel for the petitioner.

Accordingly, this petition for writ is allowed. The order impugned dated 14.2.2006 passed by the disciplinary authority being based on an illegal inquiry is quashed. The respondents are directed to reinstate the petitioner in service with all consequential benefits.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.